

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ANTHONY FRAZIER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

09-CR-0349A

11-CV-1015A

DECISION AND ORDER

Petitioner Anthony Frazier has moved to withdraw the petition he filed pursuant to 28 U.S.C. §2255. For the reasons stated below, the motion is granted.

DISCUSSION

In 2010, Petitioner pled guilty to violating 21 U.S.C. § 846 and was sentenced to 210 months' imprisonment. See Docket 282. Petitioner then filed a timely motion to vacate or reduce his sentence pursuant to 28 U.S.C. § 2255. Several years later, and while his § 2255 petition was still pending, Petitioner filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) based on an amendment to the U.S. Sentencing Guidelines. While Petitioner's § 3582 motion was pending, Petitioner then notified the Court that "if . . . the Court grants . . . [Petitioner's] motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) . . . Defendant's pending Section 2255 motion is moot." Docket 536 at 5.

The Court later granted Petitioner's § 3582(c)(2) motion, reducing his term of imprisonment from 210 months to 168 months. See Docket 538. In light of Petitioner's statement that granting his § 3582(c)(2) motion would "moot" his § 2255 petition, the Court then directed Petitioner to clarify whether he intended to withdraw his § 2255

petition. See Docket 539. Petitioner responded by stating that he “requests that this . . . Court formally withdraw his previously filed § 2255 motion due to the fact that the granting of [Petitioner’s] § 3582(c)(2) motion has made the aforementioned § 2255 motion moot.” Docket 540 at 2.

It is unclear whether granting Petitioner’s § 3582(c)(2) motion had the effect of mooted Petitioner’s § 2255 petition and his amended petition, which alleged, among other things, various forms of ineffective assistance of counsel that are unrelated to the basis for his § 3582(c)(2) motion. See Docket 337. The Court will, however, grant Petitioner’s motion to withdraw his § 2255 petition (Docket 337) and his amended petition (Docket 516), given that Petitioner states that granting his § 3582(c)(2) motion “has alleviated any need, at this time, to pursue any further form of relief by way of § 2255 or its accompanying proceedings.” Docket 540 at 3.

CONCLUSION

Petitioner’s motion (Docket 540) to withdraw his § 2255 petition is granted. The Clerk of the Court shall take all steps necessary to close the petition’s accompanying civil action (11-CV-1015A).

SO ORDERED.

Dated: May 9, 2016
Buffalo, New York

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE